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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

STATE OF CALIFORNIA, *et al.*,

Plaintiffs,

v.

XAVIER BECERRA, Secretary of
Health and Human Services, *et al.*,

Defendants,

and,

THE LITTLE SISTERS OF THE POOR,
JEANNE JUGAN RESIDENCE, *et al.*,

Defendant-Intervenors

Case No.: 4:17-cv-5783-HSG

JOINT STATUS REPORT

On August 17, 2021 the Court stayed this case and ordered the parties to file status reports every three months. ECF No. 467. The parties report as follows:

1. This case concerns the validity of two rules which create a moral exemption, and

1 expand a religious exemption, to the rules establishing the contraceptive coverage
2 requirement. *See* Religious Exemptions and Accommodations for Coverage of
3 Certain Preventive Services Under the ACA, 83 Fed. Reg. 57,536 (Nov. 15,
4 2018); Moral Exemptions and Accommodations for Coverage of Certain
5 Preventive Services Under the ACA, 83 Fed. Reg. 57,592 (Nov. 15, 2018).

- 6 2. The Court has before it fully briefed dispositive motions, *see* ECF Nos. 311, 366,
7 368, 370, as well as supplemental briefs addressing the Supreme Court’s decision
8 in *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct.
9 2367 (2020), *see* ECF Nos. 433, 435, 437, 438, 440.
- 10 3. On August 3, 2021, the parties filed a joint status report, in which Federal
11 Defendants asked the Court to stay the case to permit the defendant agencies to
12 evaluate the issues presented by this litigation, as well as their regulatory and
13 policy options. ECF No. 462. The Court had once previously held the motions
14 in abeyance. ECF No. 454. Plaintiffs and intervenor March for Life did not object
15 to the request. Intervenor Little Sisters objected.
- 16 4. On August 16, 2021, Federal Defendants announced that “[t]he Departments [of
17 Health and Human Services, Treasury, and Labor] intend to initiate rulemaking
18 within 6 months to amend the 2018 final regulations and obtaining public input
19 will be included as part of the Departments’ rulemaking process.” CMS.Gov,
20 Frequently Asked Questions, Affordable Care Act Implementation FAQs (Set 48)
21 (Aug. 16, 2021) (available at [https://www.cms.gov/CCIIO/Resources/Fact-](https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs#Affordable_Care_Act)
22 [Sheets-and-FAQs#Affordable Care Act](https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs#Affordable_Care_Act)).
- 23 5. On August 17, 2021, the Court held a case management conference. The Court
24 granted Federal Defendants’ request to stay the case and directed “counsel . . . to
25 e-file a joint status report every three months.” ECF No. 467.
- 26 6. The parties filed their last status report on May 2, 2022. Federal Defendants
27 reported that they were continuing to work toward rulemaking as described in the
28

1 August 16, 2021 guidance. ECF No. 470. The Court held a status conference on
2 May 17, 2022.

- 3 7. Since the Court held its status conference, Federal Defendants have made
4 meaningful progress toward publishing a Notice of Proposed Rulemaking to
5 amend the 2018 final regulations. Specifically, on July 8, 2022, Federal
6 Defendants submitted a draft proposed rule to the Office of Management and
7 Budget (OMB) for review by its Office of Information and Regulatory Affairs
8 (OIRA) pursuant to Executive Order 12866. See Coverage of Certain Preventive
9 Services Under the Affordable Care Act (CMS-9903),
10 <https://www.reginfo.gov/public/do/eoDetails?rrid=254114>. Federal Defendants
11 intend to publish the new Notice of Proposed Rulemaking in the Federal Register
12 upon completion of that review.
- 13 8. Federal Defendants cannot control the timing of OIRA's review, but they
14 recognize the importance of moving this case forward and will continue to work
15 toward publishing the new Notice of Proposed Rulemaking as quickly as is
16 possible consistent with ongoing resource limitations and prudent decision-
17 making.
- 18 9. Federal Defendants propose that the case remain stayed and that Federal
19 Defendants continue to file status reports every 90 days to apprise the Court of
20 the status of the rulemaking and their position on the need for a continued stay.
- 21 10. Plaintiff States do not object to the Federal Defendants' proposal.
- 22 11. Intervenor Little Sisters of the Poor maintains that this lawsuit should resume and
23 be resolved against the Plaintiff States, for the reasons it has previously given the
24 Court. The Little Sisters respectfully request a status conference to discuss
25 resuming the case and setting an appropriate schedule.
- 26 12. Intervenor March for Life does not object to the Federal Defendants' proposal.
- 27
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1 Dated: August 1, 2022

Respectfully submitted,

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